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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,333	01/20/2004	Rick F. Gladney	SMCY-P04-062	9792

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EXAMINER	
TRETTEL, MICHAEL	

ART UNIT	PAPER NUMBER
3673	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/760,333	GLADNEY ET AL.	
	Examiner	Art Unit	
	Michael Trettel	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *03 January 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *01/03/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5 to 9 and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 6 of U.S. Patent No. 6,519,798. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims contain the same subject matter of claims 1 to 6 of the '798 patent. The present claims are carbon copies of the original claims of the '798 patent, with the issued claims of the '798 patent being based upon the dependent claims 9, 11, and 12 which were objected to as containing allowable. Because of this the present set of claims contain the same

subject matter of the issued '798 claims, except the claims spread the subject matter out over a wider set of claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosch. Bosch shows a mattress and mattress foundation combination 10 that comprises a mattress 12 of a three layer foam construction that overlies a foundation 20 formed as a wooden boxspring assembly covered by a foam layer 24. The mattress and mattress foundation are of the same width and length. The applicant has claimed a particular set of dimensions for the mattress and foundation set that do not coincide with the well known dimensions commonly used in the industry to make a mattress set. The examiner takes notice that it is well known in the art to make custom sized mattresses to order using any desired set of dimensions. Because of this the actual width of the mattress and/or the boxspring is little more than a matter of design choice that is readily apparent to the skilled artisan. This is because the skilled artisan would design the mattress and boxspring to fit any size needed to fit the intended use of the device, such as use in a small room, a large room, in a vehicle, etc. It should be further noted that the applicant has not established the criticality of the particular dimensions claimed, and in fact admits that they are

interspersed within a range of dimensions commonly used in the prior art. Essentially, the applicant is attempting to claim a custom size for a commonly known article without showing how this size is beyond the ordinary level of skill in the art.

Claims 1 to 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedlander. Freedlander shows a mattress support that comprises a boxspring 11 that supports a foam mattress 12. A bedboard 13 is placed between the mattress and boxspring to stiffen the overall support offered by the mattress. The bedboard 13 is made from a rubber/fiber composition and can be formed from hinged sections as shown in Figures 5 and 6. Note in particular that in Figure 6 a longitudinal hinge line 33 is formed in the board. As has been set forth above the dimensions claimed and used to make the mattress/boxspring combination are well within the level of skill of the art and would have been obvious to the skilled artisan.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirschman. Hirschman shows a mattress and boxspring assembly in which the mattress is wider than the boxspring. The boxspring includes a pair of side rails 6 that are attached to one another by laterally extending slats 7. Springs 8 are supported upon the slats 7, with shorter springs 10 being supported upon the rails 5. The springs 8, 10 are terminated in a common upper plane and support a spring mattress formed by springs 20. The actual width of the mattress and/or the boxspring is little more than a matter of design choice that is readily apparent to the skilled artisan. This is because the skilled artisan would design the mattress and boxspring to fit any size needed to fit the intended use of the device, such as use in a small room, a large room, in a

vehicle, etc. It should be further noted that the applicant has not established the criticality of the particular dimensions claimed, and in fact admits that they are interspersed within a range of dimensions commonly used in the prior art. Essentially, the applicant is attempting to claim a custom size for a commonly known article without showing how this size is beyond the ordinary level of skill in the art.

Claims 5, 6, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan. Morgan shows a boxspring/mattress combination that is of particular interest. The boxspring comprises a rectangular frame 12 that has an extension attached to its upper periphery. The upper surface of the boxspring 12 is formed with a peripheral frame formed by edge members 16 which are spanned by lateral slats 30, however the examiner takes notice that is well known in the art to make the upper surface of a boxspring from a solid sheet of material such as plywood or masonite. The extension is formed by a rectangular frame member 34 that forms a lip about the edge of the foundation or boxspring. As is disclosed in column 3, lines 45 to 55 the width of the lip can range from .375 inches to 5 inches. A spring mattress is fitted to the top of the boxspring, as is shown in Figure 2 the edges of the mattress are contiguous with the edges of the lip attached to the boxspring. As stated earlier the actual width of the mattress and/or the boxspring are little more than a matter of design choice that is readily apparent to the skilled artisan. This is because the skilled artisan would design the mattress and boxspring to fit any size needed to fit the intended use of the device, such as use in a small room, a large room, in a vehicle, etc. It should be further noted that the applicant has not established the criticality of the particular dimensions claimed, and in fact admits that they are interspersed within a range of

dimensions commonly used in the prior art. Essentially, the applicant is attempting to claim a custom size for a commonly known article without showing how this size is beyond the ordinary level of skill in the art.

Claims 6 to 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirschman as applied to claim 5 above, and further in view of Freedlander. Freedlander teaches that it is very well known in the art to place a stiffening member 13 between a boxspring and mattress for the purpose of improving the support offered by the mattress. It would have been obvious to the skilled artisan to have placed a stiffening member between the mattress and boxspring combination shown by Hirschman as is taught by Freedlander, for the purpose of improving the support of the mattress assembly.

Claims 5, 6, 8, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (4,169,294). Harris shows a platform style bedframe 10that comprises a rectangular frame formed by side members 12 and end members 16. The side and end members are formed with a vertically extending portion and a horizontally extending portion such that a "stepped" frame is formed that is wider on its upper portion than on its bottom. Note that the stepped portion extends outwardly of the frame to a substantial degree. A mattress and boxspring combination can be placed directly upon the platform, or alternately a mattress alone may be placed upon it. Notice that the side edges of the side members are provided with retaining lips 20 which are used to prevent sideways displacement of the mattress of the platform. As disclosed in column 4, lines 60 to 66 a flat board or a slat/board combination may be placed upon

the platform prior to placing a mattress upon it. The comments offered earlier concerning the claimed dimensions of the mattress and/or foundation apply in this particular instance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Michael Trettel
Primary Examiner
Art Unit 3673